

Environmental Insurance

SAM Fall Forum

San Diego, CA

September 20, 2006

Gary J. Lutz

WILLIS Risk and Insurance Services of CA

Environmental Insurance: A Tool
to Reduce Risk On Impaired
Property Transactions

Impaired Properties

- A Decision to Buy or Sell Impaired Property Should be Based on the Financial Soundness of the Deal
- Environmental Conditions or the Inability to Assess Such Conditions Can Impact the Viability of a Deal

Environmental Conditions

- Inaccurate Environmental Assessment
 - Insufficient Time to Conduct Assessment
 - Inadequate Data
 - Improper Quantification of Known Contamination
 - Unknown Contamination
- Third Party Liability
 - Bodily Injury / Property Damage
 - Cleanup

Environmental Conditions

- Inherited CERCLA Liability
- Incorrect Cost of Remediation
- Regulations Change

What Are the Options ?

- Walk Away From The Deal
- Traditional Due Diligence
- Environmental Insurance

Traditional Solutions

- Conduct an Extensive Environmental Site Characterization:
 - Costly
 - Time Consuming
 - May Not Have Access
 - Incorrect Assessment Possible

Traditional Solutions

- Negotiate An Agreement for Dealing With Pollution Conditions:
 - Time Consuming
 - May Not Resolve the Issue to Both Parties Satisfaction

Traditional Solutions

- Uncertainty About Levels of Contamination, Cost of Cleanup, and Unknown Claims
- Covers Only Known Conditions; New Conditions Subject to Uncertainty
- True Cost of Acquisition Not Known at the Inception of the Deal
- May Require An Indemnity

Traditional Solutions

- Adjust the Purchase Price
 - May Not Have Sufficient Information
 - May Not Be Able To Agree On A New Price
 - Possibility Of A Bad Deal for Either Party If the Price is Adjusted Incorrectly

Traditional Solutions

- Create An Escrow Account
 - Ties Up Funds for A Long Period of Time
 - May Not Have Funds Available
 - Improper Escrow Amount
 - True Cost of Deal Not Known at Inception
 - Does Not Create A Final “Walkaway” Deal

Environmental Insurance

- Benefits of Insurance
 - Financially Sound Business Decision
 - Quicker Resolution Than Traditional Methods
 - Shifts Risk of Due Diligence to Carrier
 - Unknown Liabilities
 - Improper Quantification of Known Liabilities
 - Regulatory Change orders

Environmental Insurance

- Quantifies the True Cost of Acquisition
 - Allows Precise Quantification of Assumed Environmental Liability
 - Stabilizes Rate of Return on Investment / Share Holder Value
- **Replaces or Backs-Up Indemnity**
- Facilitates Financing

Environmental Insurance

- An Entire Portfolio of Sites can be Included in the Deal (shared or individual aggregate)
- No Capital Tied Up in Escrow
- Minimize Reserves Carried on the Balance Sheet
- More Favorable Environmental Contingency Disclosure

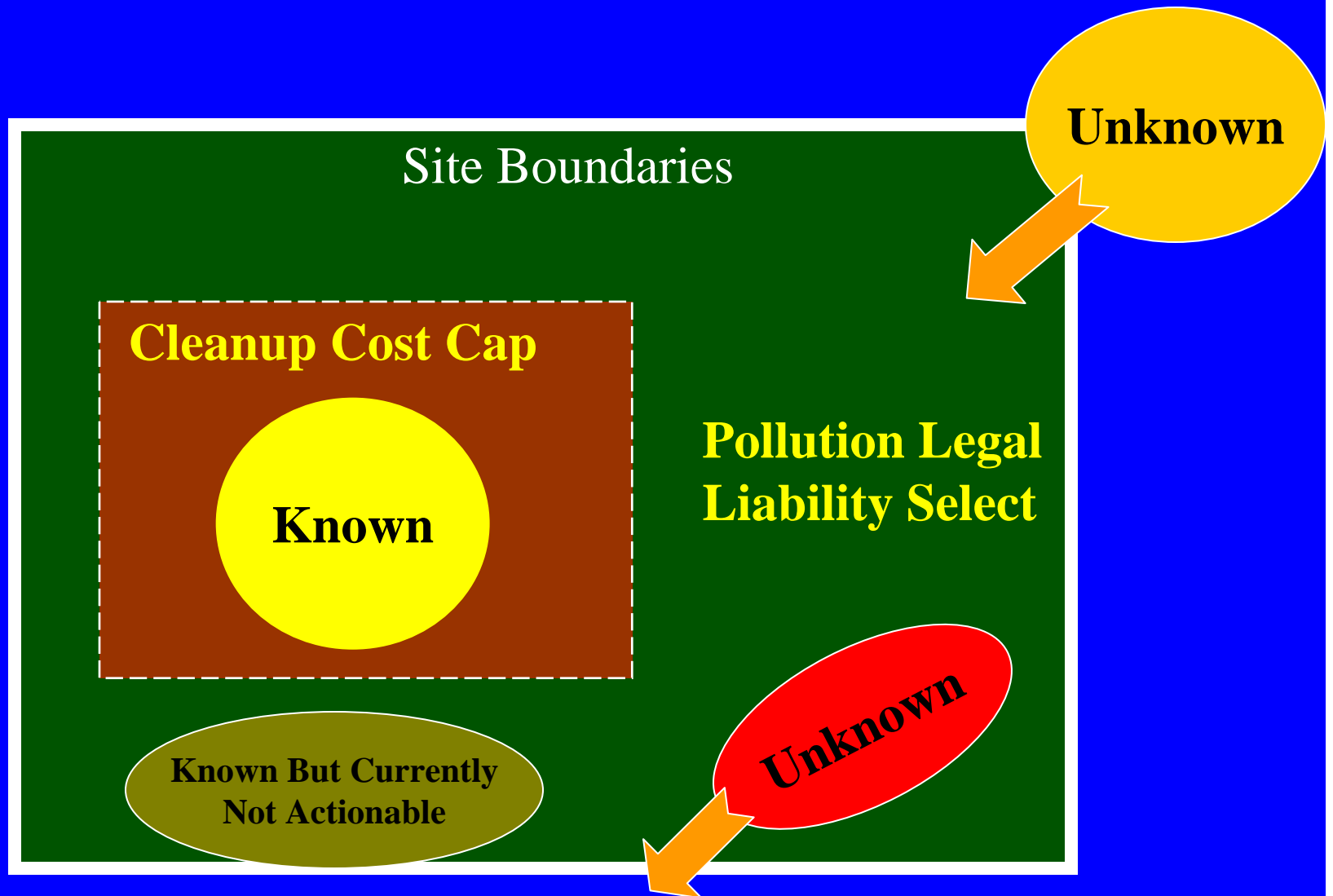
Insurance Carriers

- ACE
- AIG
- ARCH
- Chubb
- XL
- Zurich

Insurance Products

- Pollution Legal Liability (PLL)
- Cleanup Cost Cap/ Stop Loss
- Blended Finite Program
- Lender Liability

Known And Unknown Conditions



Pollution Legal Liability

- Traditional Insurance for Environmental Losses
- Losses More Fortuitous in Nature (Unknown)
- Coverage Available in a Menu Format
 - SELECT Only the Coverage Needed
 - Reduces Prices
 - Increases Flexibility

Pollution Legal Liability

- Coverages Available
 - On & Off-Site Cleanup of Pre-existing Conditions
 - On & Off-Site Cleanup of New Conditions
 - 3rd Party Claims for On & Off-Site Bodily Injury and Property Damage
 - 3rd Party Claims for Off-Site Cleanup of Pre-Existing and New Conditions

Pollution Legal Liability

- 3rd Party Claims for On and Off-Site Clean-up at Non-Owned Locations (Disposal Sites)
- 3rd Party Claims for On and Off-Site B.I., P.D. at Non-Owned Locations
- Pollution Conditions Resulting from Transported Cargo
- Business Interruption

Pollution Legal Liability

- Transaction Normally Requires Coverage for Losses Due to Unknown Conditions Which Exist at the Locations at the Time of Title Transfer (Retrospective)
- Can Be designed to Protect Both Buyer and Seller
- Options for New Conditions

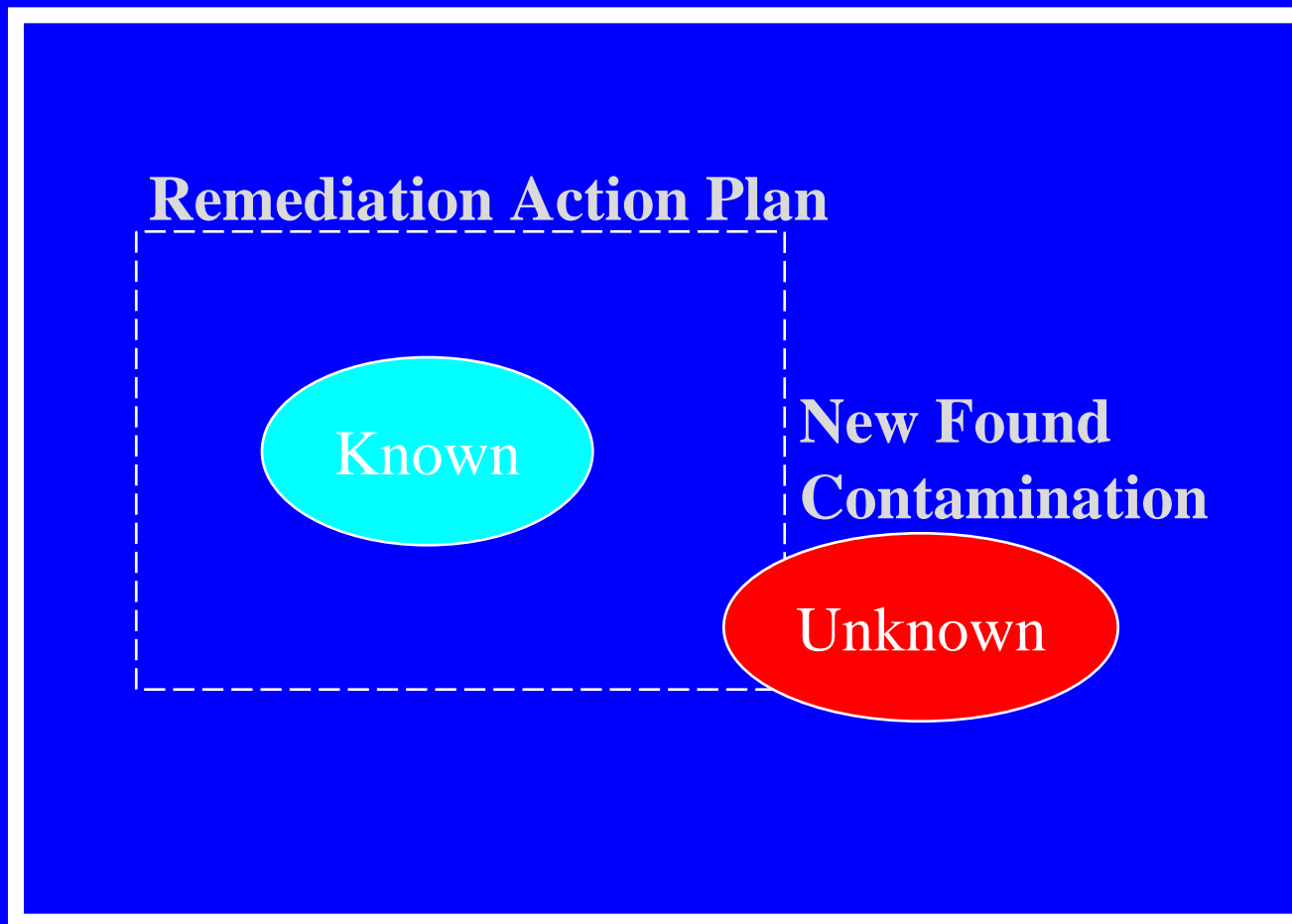
Pollution Legal Liability

- Can Insure Clean (perceived) as Well as Contaminated Sites
- Simple Application Process
- Site Characterization Requirements Determined By Carrier
 - Due Diligence Risk Transferred to Insurer

Cleanup Cost Cap

- Coverage Provided for Active Remediation Projects (known contamination)
- Caps the Cost Of Remediation at the Expected Price
- Ensures Proper Valuation of Deal
- Limits Liability for Excess Cleanup Costs

Cleanup Cost Cap

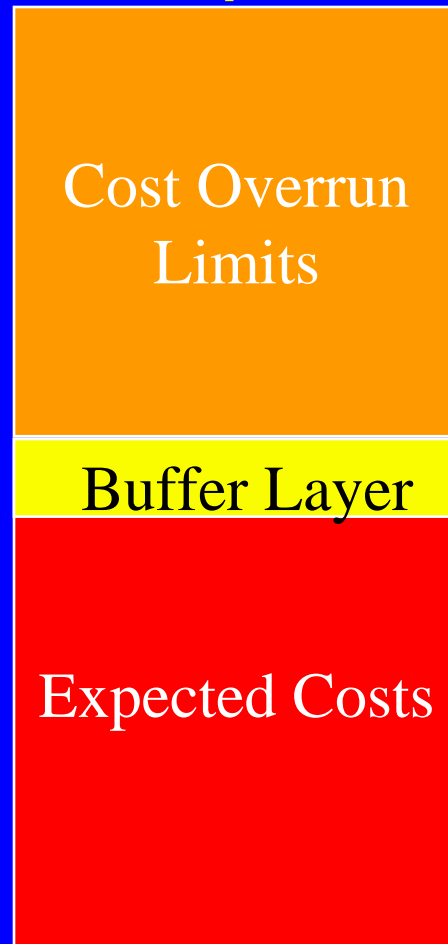


Cleanup Cost Cap

Covers Remediation Cost Overruns for:

- Actual Known Contamination Greater than estimated.
- Discovery of a New Contamination
- Regulatory Change Orders During Remediation
- Inefficient Cleanup

Cleanup Cost Cap



Cleanup Cost Cap

Basic Structure:

- Coverage Attaches Above the Expected Clean Up and Buffer; (= SIR = Self Insured Retention)
- Premium Discounts are Available for Additional Buffer Layer and or a Pro Rata Co-Insurance
- Minimum Premium \$300,000

Blended Finite

**Cleanup
Cost Cap**

PLL Select

Funded

Blended Finite

- \$5 Million+ in Remediation Costs
- PLL and CCC with the Expected Costs of Remediation Incorporated into the Premium
- Can Be Used in Conjunction with Qualified Settlement Fund for Accelerated Tax Benefits

Blended Finite

- Ideal for All Property Transactions; Liability Capped and Fully Transferred to Carrier
- Can Serve as Financial Assurance
- Long Term Policy 15 + years
- Combine with GLC for Longer Term

Lender Policy

- Insures Lender
- Two Triggers
 - Default
 - New Pollution Conditions
- Term of Loan = Policy Term (15 years)
- Loss Payout = Lesser of Loan Balance or Cleanup Costs, LBO available For Cleaner Properties, Portfolios
- Industrial Sites/Exclude Known Conditions

For more information...

- Gary J. Lutz
- Vice President
- Willis Risk and Insurance Services
- (213) 607 - 6283 Office
- (310) 570 – 8103 Cell
- gary.lutz@willis.com